

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Henry Earl Burnside, Jr., #236375,
Petitioner,

vs.

Warden, Tyger River Correctional
Institution,

Respondent.

Civil Action No. 8:07-105-RBH-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On April 23, 2007, the respondent filed a motion for summary judgment. On April 24, 2007, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgement procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on June 11, 2007, giving the petitioner through July 5, 2007, to file his response to the motion for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner elected not to respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce H. Hendricks
United States Magistrate Judge

July 18, 2007
Greenville, South Carolina